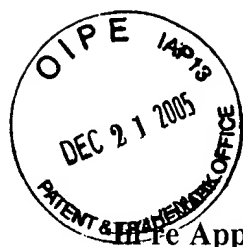


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PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of Broker et al.

)

) Group Art Unit: 2173

)

Serial Number 09/919,794

)

) Examiner: T. Hailu

)

Filed August 2, 2001

)

) Docket No.: BRO009-162

For: Information Display System For an Appliance
Incorporating Electronic Interface Screen

COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, VA 22313-1450

Sir:

The below identified communication(s) or document(s) is(are) submitted in the above application or proceeding:

☒ Applicant's Reply Brief

☐ Issue Fee Transmittal

☐ Information Disclosure Statement

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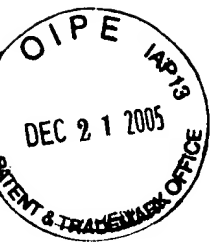
Respectfully submitted,

Everett G. Diederiks, Jr.

Attorney for Applicant

Registration Number: 33,323

Date December 21, 2005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|----------------------|----------------|---|------------------------|
| In re Application of | Broker et al. |) | |
| | |) | Group Art Unit: 2173 |
| | |) | |
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**For: Information Display System For an Appliance
Incorporating Electronic Interface Screen**

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

APPLICANT'S REPLY BRIEF

Sir:

This paper is filed in response to the Examiner's Answer dated October 21, 2005 issued in the above-identified U.S. patent application.

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

In general, the Applicant will sequentially address below, utilizing the section headings referenced in Section 11 of the Answer, many of the points raised by the Examiner.

Response to Argument directed to Affidavit under Rule 1.131

The Applicant respectfully submits that a review of the merits of an affidavit filed under 37 C.F.R. § 1.131 is by appeal to the Board of Patent Appeals and Interferences not by Petition. The affidavit was filed on July 20, 2004 under 37 C.F.R. § 1.131 and was entered and considered by the Examiner but deemed ineffective to overcome the Blair et al. (U.S. Patent No. 6,502,265) reference. The Examiner stated in the Office Action dated January 4, 2005 "that the evidence submitted in the affidavit is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the '265 reference." Thus, the issue is not one of formal sufficiency and propriety which is petitionable, but directed to the merits of the affidavit. M.P.E.P. § 715.08 clearly states that review of the merits of a 37 C.F.R. § 1.131 affidavit or declaration is by appeal to the Board of Patent Appeals and Interferences.

It is respectfully submitted that the basis for holding the affidavit ineffective is irrelevant to the present circumstances. Initially, it is important to note that the Applicant never intended to show a reduction to practice prior to the effective date of the '265 reference, but rather conception of the invention prior to the effective date of the reference coupled with diligence from prior to the date to a subsequent reduction to practice or to the filing of the application. The record contains evidence of a conception date of May, 2000 and a statement of diligence concerning the production of an actual

washing machine approximately four months after conception. It is respectfully submitted that this information alone clearly proves diligent working as a four month window from conception to reduction to practice in the form of an actual production version of a washing machine is an incredibly short period of time. Regardless, the record already shows that the present invention was reduced to practice prior to the effective date of the '265 reference. That is, production of the invention took place in the United States before the filing of the application resulting in the Blair et al. patent. M.P.E.P. § 715.07(a) requires particular evidence of facts establishing diligence when the reduction to practice is after the effective filing date of the reference. This section specifically states that, under 37 C.F.R. § 1.131, "the critical period in which diligence must be shown begins just prior to the effective date of the reference or activity and ends with a date of a reduction to practice" (emphasis added). In the present case, the Applicant has declared and, in fact, conveyed to the Examiner that the present invention was actually reduced to practice prior to the effective date of the reference. Thus, it is respectfully submitted that there is no period of diligence that must be shown after the effective date of the reference as the present invention was actually reduced to practice prior to that date. As previously made of record, the Blair et al. patent is owned by the same assignee and covers another aspect of the same production machine as the present invention. It is not effective prior art.

Regarding the Arguments directed to Claims 1, 5, 7, 8, 12 and 14

The Applicant respectfully submits that the Examiner fails to address many of the arguments presented in the Appeal Brief relating to claims 1, 5, 7, 8, 12 and 14 and instead focuses his argument on the definition of the word "sets." While "sets" is an important term in the above claims, there are other limitations that are glossed over or simply ignored in the Examiner's Answer. In any case, the Applicant submits that, while it is widely known in the science of mathematics that a set can include zero, one, or more members, when read in light of the specification of the present case, a set cannot include zero given that the claims describe a first set of information. A null set or zero would not

constitute a set of information. Moreover, as the second set of information must represent additional details concerning the first set of information, the first set of information could not be a set of nothing as you cannot provide additional details of nothing. Therefore, this interpretation by the Examiner is simply not reasonable.

In addition, the Applicant respectfully submits that the Examiner is improperly employing his own definition of the word "sets" in rejecting the claims of the present application. The Courts have said on numerous occasions that the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art. *Vitronics Corp. v. Conceptronic Corp.*, 90 F.3d at 1576, 1582 (Fed. Cir. 1996). The Courts go on to state that, more importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification. *Innova/Pure Water, Inc. v. Saffari Water Filtration Systems, Inc.* 381 F.3d 1111, 1116 (Fed. Cir. 2004). The Federal Circuit, citing *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998) stated that the words used by the inventor(s) to describe the invention, the inventor's lexicography, must be understood and interpreted as they would be understood and interpreted by a person in that field of technology. Thus, the Courts starts the decision making process by reviewing the same resources as would that person, i.e., the patent specification and the prosecution history. The Court goes on to say that it is improper to look at an ordinary meaning of the term in a vacuum, but rather the term must be interpreted in the context of the written description and the prosecution history. See *Phillips v. A.W. Corp.*, 75 U.S.P.Q. 2D 1321 (Fed. Cir. 2005). Therefore, the courts have repeatedly emphasized that the Examiner cannot simply look to a dictionary or other source for defining a claimed word, but must instead initially look to the specification and use the definition set forth by the Applicant. Under this requirement, the Examiner's position must fail. That is, the Examiner's definition of "sets" conflicts with the meaning desired by the Applicant and set forth in the specification.

Also, important in connection with the discussion of these claims in the Examiner's Answer, the Examiner never addresses the arguments relating to enlarging the screen upon selection of the first set of information to present a second set of information that is related to the first set of information. At no point in the '265 reference is there any discussion or teaching to enlarging a display so as to substantially, entirely encompass a screen, while automatically presenting a second set of information, with the second set of information presenting additional details concerning the first set of information. The Examiner argues that Figure 2 illustrates displaying a first set of information (e.g., menu options, such as hints and tips, select cycle, etc.) in one or more of the plurality of zones or selectable areas. It is submitted that, when read in light of the specification, menu options, hints and tips or select cycle does not constitute a set of information at all analogous to that of the present invention. When the claim is not read in a vacuum but in light of the specification, it is clear that the first set of information refers to information conveyed to the user about the appliance or, more specifically, about operation of the appliance. In any case, selecting one of the menu options as referenced in the Examiner's Answer would not cause the display to be enlarged so as to substantially, entirely encompass the screen and provide a second set of information that conveys additional details relating to the first set of information. Selecting, for example, hints and tips, will provide a submenu of options. However, that submenu of options does not present a second set of information which provides additional details or expands upon the first set of information, i.e., hints and tips. Taking an overview of the Examiner's position, the second set of information would have to provide additional details of a null or zero set. That makes no sense at all.

Regarding the Arguments directed to Claims 2 and 9

The Applicant respectfully submits that the Examiner has misconstrued the term codes as used in claims 2 and 9. Claims 2 and 9 require that the first set of information be presented in the form of codes, with "codes" being plural. Thus the first set of information must not only include actual codes themselves and not simply the word

"codes" as argued by the Examiner, but the plural form of the noun precludes the Examiner from arguing that the first set contains zero or none. Again, when the claims are not read in a vacuum, but in light of the specification, it is clear that the codes refer to specific codes and not merely to the word codes as argued by the Examiner. Also, the Applicant has clearly defined what is meant by the recitation to "codes" which the Examiner must accept under at least the *Philips* case, *supra*. As claimed, codes refer to a coded message and not the word "codes" as unreasonably construed by the Examiner.

Regarding the Arguments directed to Claims 3, 4, 10 and 11

The Examiner has again missed the point of the arguments presented in the Applicant's Appeal Brief. That is, claims 3 and 10 specifically require providing additional details to define the codes. Claims 4 and 11 require that actual diagnostic codes are presented as the first set of information. The Examiner's arguments again focus on the fact that a set can include zero information. However, given that the word codes is presented in its plural form, the set cannot contain zero or even one piece of information but must contain more than one piece of information, with the second set of information concerning additional details regarding the first set of information. That is, the first set of information must be actual diagnostic codes, with the second set of information expanding upon and providing details explaining the meaning of the diagnostic codes.

Regarding the Arguments directed to Claims 6 and 13

The Examiner correctly identifies that the screens shown in Blair do present information successively. However, the successive information in Blair does not further define or detail the initial set of information. That is, the initial screen and subsequent screens must relate one to the other in a relationship corresponding to that outlined in the claims and presented in the specification. The screens disclosed in Blair et al. simply do

not present analogous first and second sets of information in any corresponding hierarchy format.

Regarding the Arguments directed to Claims 15, 18, 19 and 20

The Examiner also correctly identifies that both the Blair et al. invention and the current invention are directed to the same product model laundry appliance including interactive features. However, the Blair et al. reference and the present invention differ on the information provided on the display. At no point in Blair et al. is there any teaching analogous to presenting a first set of information in one of the plurality of zones which, upon selection, is subsequently enlarged to present a second set of information representing additional details concerning the first set of information. Moreover, given that claim 15 is presented in means-plus-function format, the reference must include each and every element whether inherently or explicitly in order to anticipate the claim. The M.P.E.P. clearly states that the broadest reasonable interpretation of a means-plus-function claim must not be done in total disregard to the structure disclosed in the specification. In particular, M.P.E.P. § 2182 requires that “the application of a prior art reference to a means or step plus function limitations requires that the prior art element perform the identical function specified in the claim (emphasis added) (see page 2100-236, column 1, lines 15-18). In addition, M.P.E.P. § 2183, in discussing *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990), states that “the prior art element performs the same function specified in the claim in substantially the same manner as the function is performed by the corresponding element described in the specification” (emphasis added) (see page 2100-237, column 2, lines 8-13). Therefore, the Examiner must look to the specification to determine the meaning of the claim language and the potential relevance of the prior art. The Applicant respectfully submits that a review of the specification would reveal significant distinctions between the first and second sets of information outlined in the specification of the present application and the various screens and possible user options presented in the Blair et al. reference. The Examiner argues that the arguments presented to claim 16 are similar to the arguments presented

regarding the word codes and thus, relies upon these arguments to support the rejection to claims 15, 18, 19 and 20 relating to claims 2 and 9 set forth above.

Regarding the Arguments directed to Claim 16

The Examiner fails to consider that claim 16 is presented in means-plus-function language and this must be read in light of the specification. A review of the specification would reveal that the first set of information constituting codes would not and could not be equivalent to the simple use of the word "codes" as employed in Blair et al. for at least the reasons set forth above in arguing the patentability of claims 2 and 9.

Regarding the Arguments directed to Claim 17

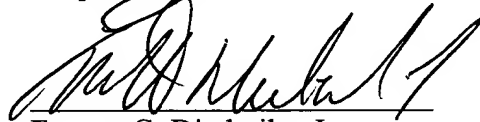
Again, relying on previous arguments directed to claims 2 and 9, the Examiner glosses over the fact that claim 17 further limits the means-plus-function language of claim 15 and thus, should be interpreted in light of the specification. Blair et al. does not have any disclosure concerning providing codes and then, in subsequent enlarged display screens providing details of those codes for any purpose analogous to the present invention.

Summary

In general, it appears clear that the Examiner is reading the claims of the present application in a vacuum without regard to the specific disclosure contained in the specification of the present application in an unreasonable attempt to employ the Blair et al. reference to reject the claims of the present application. The Applicant has attempted to deal with the Examiner in both written responses and in establishing multiple interviews, both in person and over the telephone in this case. Although potential changes (considered by the Applicant to be unnecessary to patentably define the invention) were proposed to the Examiner, the Examiner has failed to recognize any

distinction between the present invention and the invention set forth in Blair. The Applicant has proven that the Blair reference is owned by the same assignee and does not constitute prior art, but this showing has also not been recognized. If the Examiner is correct and the Blair reference "clearly anticipates" the present invention then, presumably, the present claims could have been presented in the Blair application to cover this invention as well. This is clearly not the case. Surely, it can be recognized that Blair is not concerned with the problem addressed by the present invention wherein a first screen conveys a first set of information, specifically in the form of codes for claims 2-7, 8-14 and 16-20, which is all the information needed for an experienced technician or the like who can interpret or understand the first set of information (codes), while a second screen providing additional details of the first set of information is available if needed by a less experienced individual. There is simply no analogous disclosure in the Blair reference, which is not prior art anyway. Based on the above, it is respectfully submitted that the Board reverse the rejections presented in this case.

Respectfully submitted,



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